Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*"), for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants, tenant MH ("tenant") and "tenant AH," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 80 minutes from 1:30 p.m. to 2:50 p.m.

The landlord and the two tenants provided their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord stated that she owns the rental unit, and she provided the rental unit address.

Both tenants agreed that the tenant would be the primary speaker for both tenants at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules"*) does not permit recording of this hearing by any party. At the outset of this hearing, the landlord and the two tenants all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

At the outset of this hearing, I cautioned both parties to speak one at a time, to minimize any background noise, not to interrupt each other or myself, and not to argue or be hostile. I informed them that I needed to be able to hear properly, in order to make a decision. I notified them that I may be required to mute their teleconference lines or exclude them from this hearing and continue in their absence, if they did not comply with the above directions. The above is in accordance with Rule 6.10 of the RTB *Rules*. Both parties confirmed their understanding of same.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88 and 89 of the *Act*, I find that both tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2015 and ended on October 31, 2021. Monthly rent in the amount of $2,100.75 was payable on the first day of each month. A security deposit of $900.00 was paid by the tenants and the landlord continues to retain this deposit in full. No move-in condition inspection

report was completed by both parties. The tenants provided a written forwarding address, which was received by the landlord on November 8, 2021, by email, and on November 16, 2021, by registered mail. The tenants did not provide written permission for the landlord to keep any amount from their security deposit. The landlord's application to retain the tenant's security deposit was filed on November 16, 2021.

Both parties agreed to the following facts. A move-out condition inspection occurred on October 30, 2021, with the landlord and the tenant present. The tenants returned the keys for the rental unit to the landlord on October 30, 2021. The landlord took notes in her own notebook at the time of the move-out condition inspection with the tenant, but she did not show the notes or ask the tenant if he agreed with them. The tenant offered to complete another move-out inspection with the landlord on November 8, 2021, but the landlord refused. Both parties did not complete a formal report during the move-out condition inspection. The landlord completed her own move-out condition inspection report on the proper forms and provided a copy to the tenants on November 8, 2021.

The landlord stated the following facts. She did not fill out a report during the move-out condition inspection with the tenant because her printer broke, and she could not print out the forms to do so. She filled out the proper report forms based on her own notes in her notebook and sent it to the tenants later. The tenant offered to complete a move-out condition inspection on November 8, 2021, but the new tenants had already started moving stuff in on that date, and they settled in on November 9, 2021. The tenant took off after the move-out condition inspection, so she did not have an opportunity to ask him to check her notes or to agree with them.

The tenant stated the following facts. He did not take off after the move-out condition inspection, as he was present the entire time. There was no proper move-out condition inspection done with the landlord. He met with the landlord at 1:00 p.m. on October 30, 2021, and he was there on time. The landlord had two adults and one child present, and the tenant was not aware that they would be there. The landlord did not complete a move-out condition inspection report. The landlord made her own notes in her own notebook. The move-out condition inspection report was not signed by the tenants and the landlord did not follow the laws regarding the inspection. The tenants asked for their security deposit back from the landlord and she said that she would not return it and the tenants owed her additional money. The tenants asked for a proper move-out condition inspection report multiple times by email but the landlord said that she would give the report to the tenants when she had time. There was no move-out condition inspection report conducted with the tenants present. The tenant offered to complete a move-out condition inspection on November 3 and 8, 2021, and the landlord refused.

The landlord stated that she seeks a monetary order of $3,835.00 plus the $100.00 application filing fee.

The landlord testified regarding the following facts. The tenants broke two garburators during their tenancy. The landlord replaced one during the tenancy and the tenants did not mention breaking the second one, which the landlord had to replace at the end of the tenancy. The landlord provided an invoice for $415.47 for the garburator that she replaced, as she found out it was broken upon move-out. The landlord seeks $415.00 for the garburator, and she did not provide a receipt or a copy of the cheque payment she made. The landlord seeks costs for clogs in the bathtub and bathroom sink. The tenants left lots of hair and the water would not go through. There was a plumbing problem, there was hair in the drain and the lever, and it took hours to clean and fix. The new tenants told the landlord that the bathroom sink was clogged, as she found a hairball, so the landlord called a plumber. The landlord provided photographs and a plumber's invoice but no receipt. The landlord paid for this cost by e-transfer but did not provide the email confirmations. The landlord seeks $200.00 for the plumber's cost for the bathroom sink. The landlord seeks $200.00 for her own personal cleanup of the bathtub clog, which is the same cost as a professional plumber, even though she is not a plumber. She seeks the above costs because she spent half a day and bought products to clean. She did not provide receipts for the plumbing costs. The landlord discovered that the dishwasher was not working and provided a witness report that the water was not hot, and it would hum all night. The landlord provided an invoice but no receipts. The landlord provided the plumber's invoice of $600 total, of which she claims $400 is for the dishwasher. The landlord spent $725.19 to buy a new dishwasher and $31.35 to buy hoses for the dishwasher. The installation and replacement of the dishwasher and hoses cost a total of $1,157.00 for the landlord. The landlord did not provide any receipts for the dishwasher costs.

The landlord stated the following facts. She seeks cost for cleaning. She had to move the fridge on her own and clean behind it, and she is much smaller than the tenant. She provided pictures of the grout and mildew in the bathroom. The tenants never cleaned the hood fans at the rental unit for six and a half years. The balcony was black in the lower corners. The windows were streaked, and the tenants were supposed to clean the windowsills and window frame. The landlord provided photographs of the "filthy" condition of the rental unit. The landlord obtained a quote from a good professional cleaning company and provided a copy of the email. The landlord completed cleaning herself and charged $35.00 per hour for 18 hours, for a total of $630.00. The professional cleaning company charges more at $55.00 per hour and the landlord asked

around for different prices. The landlord is not a professional cleaner and does not have her own registered company, so she does not want to charge GST to the tenants, for which she originally claimed in her monetary order worksheet. The landlord had to buy cleaning supplies and the new tenants thought that it was a “brand-new” place after the landlord cleaned it. The landlord seeks costs for the bathroom sink, as there were five rust spots that went right through it, which were not there before. The landlord provided a quote for $300.00 but she is only seeking $18.00 from the tenants, for two bottles of paint, for work that she did herself. The landlord provided receipts for this cost as well as photographs.

The landlord testified regarding the following facts. She seeks $600.00 for the hardwood floor, as there was a long deep scratch that was not there before the tenants moved in. She provided an email quote but not any receipts. The quote is only for labour, not materials. She has not completed this work yet, as she requires money from the RTB to do so. She seeks costs for the window coverings, which are venetian blinds. They were made of a good material, are heavy, and block light. The chains for the venetian blinds were rusted and the tenants did not turn on the heat, but they opened the windows. The chains are hanging down. The landlord provided two witness reports. She provided quotes for $2.61 per panel for 157 panels, for a total of $410.00. She cleaned the venetian blinds herself and she is charging the same amount provided in the quote from a professional company because it took her days to clean it, since the blinds were splattered with barbecue sauce. The landlord seeks $140.00 for the chain replacement on the bottom of the venetian blinds, which has not been completed yet. She provided a quote by email, where she added up the cost, according to the quote. The estimates per foot were lower, not enough, and are “rough” estimates. The landlord provided 2 witness reports regarding the condition of the rental unit when the tenants moved out and the problems with the tenants during their tenancy. Everything was brand new. There were seven light bulbs that were burnt out and the landlord seeks $65.00 for this cost, as she provided receipts and photographs for it.

The tenant testified regarding the following facts. On February 26, 2015, the tenants did a walk through with the landlord's agent when they moved in. The landlord’s agent said that everything was professionally cleaned. There is an email showing that repairs were not done and the patio and blinds were not cleaned. The landlord is attempting to pass on damages to the tenants from prior to the beginning of their tenancy. The dishwasher was used by the tenants until they moved out and it was in good working order. The landlord repaired the dishwasher during the tenancy and the Residential Tenancy Policy Guideline indicates that appliances are the responsibility of the landlord, unless they are damaged deliberately or neglectfully by the tenants, which is not the case here. The

garburator was replaced, which is another appliance that is the responsibility of the landlord. The tenants rarely used the garburator, since they mainly used the green compost bin for food items. The tenants were unaware of any clogs in the bathroom tub or sink and it was ok when they used it. The bathroom sink had chips when the tenants moved in, since the sink is original from 1997, it is 24 years old, and there is no move-in report regarding the bathroom sink chips. The blinds were in the same condition from the beginning of the tenancy, including the barbeque splatter stains. The tenants have an email from 2015, stating that the blinds were not cleaned when they moved in. The tenants asked for the blinds to be cleaned but the landlord denied it. There are move-in photographs showing that the condition of the blinds was the same as when the tenants moved out. The tenants did not cause any damage to the hardwood floor, as it was in the same condition from move-in and move-out. There were two burnt out lightbulbs when they moved in that could not be replaced because the professional came in and said that replacement would cause damages. The tenants provided emails from 2015 regarding the lightbulbs. The hood fan was inaccessible to the tenants and the landlord did not provide any instructions for cleaning it. The landlord did not provide any instructions about cleaning the fridge on move-out, as it is the landlord's responsibility to move the fridge, as per the Residential Tenancy Policy Guideline. The tenants cleaned the exterior and interior of the fridge, where they could reach. The tenants cleaned all other areas. The patio was not clean when the tenants moved in and they provided photographs from 2018 of pressure washing. There was nothing on the tenancy agreement regarding cleaning the patio. The tenants dispute the landlord's entire application and the items and amounts in the landlord's monetary order worksheet.

The landlord stating the following facts in response to the tenant's submissions. How is the landlord supposed to repair the broken garburator and dishwasher if she was not informed by the tenants that they were broken.

Analysis

Rules and Burden of Proof

At the outset of this hearing, I informed the landlord that, as the applicant, she had the burden of proof, on a balance of probabilities, to prove her application and monetary claims. The landlord affirmed her understanding of same.

The landlord was provided with an application package from the RTB, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), which she was required to serve to the tenants. The NODRP, which contains the phone

number and access code to call into this hearing, states the following at the top of page 2, in part (emphasis in original):

> *The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*
>
> - *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
> - *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*
> - *The hearing will continue even if one participant or a representative does not attend.*
> - *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules of Procedure* state, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

I find that the landlord did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

During this hearing, the landlord failed to properly go through her claims and the documents submitted in support of her application. I was required to repeatedly ask the landlord many questions about her claims, amounts, and documents, since she did not indicate same, unless I asked. The landlord provided confusing and inconsistent testimony regarding her claims, amounts, and documents, as it frequently changed throughout this hearing. This hearing lasted 80 minutes, so the landlord had ample opportunity to present her application and she spoke for the majority of the hearing time. I repeatedly asked the landlord if she had any other information to present during this hearing.

The landlord mentioned the existence of documents she submitted for this hearing, but she did not go through these documents properly in specific detail unless I asked about them. The landlord uploaded a voluminous number of documents separately, including photographs, invoices, receipts, and statements. I informed the landlord that her evidence was uploaded to the online RTB application database on different dates, with different names, in different sections. The landlord was unsure of the names and locations of many of her documents on the online RTB website, which she uploaded and named herself. I provided the landlord with ample and additional time during this hearing to look up her documents and the names, since she did not have them prepared for this hearing. I find that the landlord's evidence was disorganized and difficult to follow, as I was left searching on my own, through many different locations and file names, to find the documents that the landlord was referencing during this hearing. I informed the landlord about the above information during this hearing.

Act and Policy Guidelines

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

> *C. COMPENSATION*
> *The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.* ***It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*** *In order to determine whether compensation is due, the arbitrator may determine whether:*
> - *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
> - *loss or damage has resulted from this non-compliance;*

- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

…

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. ***A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*** *For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the documentary evidence and testimony of both parties. I dismiss the landlord's application for $3,835.00 without leave to reapply. The tenants disputed the landlord's entire application.

I find that there is no move-in condition inspection report to show the condition of the rental unit when the tenants moved in. Therefore, I cannot determine which damages were pre-existing when the tenants moved into the rental unit. The tenant identified the above issue repeatedly during this hearing.

The landlord completed the move-out condition inspection report on her own without the tenants present, on November 8, 2021, nine days after the move-out condition inspection occurred on October 30, 2021, based on her own notes made during the inspection. The landlord agreed that she did not show her notes to the tenant or asked if he agreed or disagreed with it during the move-out condition inspection on October 30, 2021. Therefore, I find that the landlord's move-out condition inspection report is unreliable and does not accurately demonstrate the condition of the rental unit when the tenants moved out. The landlord delayed completing the move-out condition inspection report and sending it to the tenants. The tenants did not have a chance to provide input or discuss the damages observed by the landlord on her written notes, during the move-out condition inspection. The move-out condition inspection report is based on the landlord's notes only.

I dismiss the landlord's claims for a garburator of $415.00, a new dishwasher, hoses and installation totalling $1,157.00, and a plumber's bathroom sink repair of $200.00, without leave to reapply. I accept the tenant's testimony that the garburator, dishwasher, and bathroom sink were in proper working order when they vacated. The landlord claimed that the bathroom sink clog was reported to her by the new tenants, after they moved in on November 8, 2021, and this is after the move-out condition inspection was completed with the tenant on October 30, 2021. I find that there is no move-in condition inspection report to show the condition of the rental unit when the tenants moved in, so I cannot determine whether the above damages were pre-existing before the tenants moved into the rental unit.

I find that the landlord did not provide sufficient documentary evidence, such as receipts, to show what amount was paid by the landlord, when it was paid, or other such information for the garburator, dishwasher and bathroom sink. The landlord provided copies of invoices with balances due and quotations or estimates for work to be done but not any proof of payment. The landlord agreed that she had receipts, cancelled cheques, and emails confirming e-transfers, but she did not provide them for this hearing because she did not know she had to do so. I informed the landlord that she could not provide the above documents after this hearing because the tenants would not have a chance to respond to them. I notified the landlord that she had ample time from filing this application on November 16, 2021, to this hearing date of June 17, 2022, a period of over 7 months, to provide the above information.

The landlord did not complete replacement of the hardwood floor of $600.00 and the venetian blinds chains replacement of $140.00 at the rental unit and these claims are

dismissed without leave to reapply. The landlord provided email quotes for the above costs, not invoices or receipts. New tenants moved into the rental unit on November 8, 2021. The tenants claimed that the above damages were present when they moved into the rental unit. I find that there is no move-in condition inspection report to show the condition of the rental unit when the tenants moved in, so I cannot determine whether the above damages were pre-existing before the tenants moved into the rental unit.

The landlord charged her own fees for work that she claimed she completed herself at the rental unit. This includes unclogging a bathtub of $200.00, cleaning of $630.00, and cleaning of venetian blinds of $410.00. These claims are all dismissed without leave to reapply. I accept the tenant's testimony that the tenants sufficiently cleaned the rental unit before they moved out, their bathtub was in proper working order when they vacated, they were not given instructions from the landlord on how to clean the venetian blinds, which were dirty when they moved in, and were not cleaned when they asked the landlord to complete same.

The landlord agreed that she was not a certified plumber or a professional cleaner. However, she charged the same rate of $200.00 to unclog the bathtub, as a professional plumber that she said unclogged the bathroom sink for $200.00. The landlord also charged $630.00 plus GST for cleaning, and when I asked whether she was permitted to charge GST when she did not have a registered cleaning business, she claimed that she was no longer seeking GST at this hearing. I find that the landlord failed to justify the $35.00 per hour rate for 18 hours that she claimed, simply stating that it was less than the quote she received of $55.00 per hour from a professional cleaning company. The landlord also charged for cleaning of venetian blinds of $410.00, the same amount that she said the professional company quoted her, when she is not a professional cleaner. The landlord completed her own calculations from the quote for the venetian blinds.

I find that the above amounts are unreasonable, and the landlord cannot claim the same rates as professionals, when she is not a certified plumber or a professional cleaner. I also find that there is no move-in condition inspection report to show the condition of the rental unit when the tenants moved in, so I cannot determine whether the above damage was pre-existing before the tenants moved into the rental unit.

I dismiss the landlord's claims for bathroom sink chips of $18.00 and burnt-out lighting of $65.00. I accept the tenant's testimony that bathroom sinks chips were present when they moved in and the original sink is from 1997, so it is 24 years old. I accept the

tenant's testimony that some of the burnt-out lightbulbs were present when the tenants moved in and a professional who came to fix it, could not do so because it would cause damages, as per emails from 2015. I find that there is no move-in condition inspection report to show the condition of the rental unit when the tenants moved in, so I cannot determine whether the above damages were pre-existing before the tenants moved into the rental unit. The landlord did not go through any invoices or receipts in any specific detail for the above claims, except to mention that they existed.

I also note that the landlord did not indicate the age of the rental unit, or the building elements contained therein, in order for me to determine their useful life, as per Residential Tenancy Policy Guideline 40. The tenant indicated that the landlord's bathroom sink was 24 years old, since it was original from 1997. If the rental unit was built in 1997 and contains the original building elements, it was 24 years old at the end of this tenancy in 2021. The useful life of the relevant building elements in this claim are as follows: hardwood flooring is 20 years, dishwashers are 10 years, drapes and venetian blinds are 10 years, and tubs, toilets and sinks are 20 years. Therefore, the above building elements are past their useful life and could be expected to be replaced by the landlord in any event, if they are 24 years old. The landlord made claims related to the dishwasher, hardwood flooring, bathroom sink, bathtub, and venetian blinds, in this application.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the $100.00 application filing fee from the tenants.

Security and Pet Damage Deposits

The landlord continues to hold the tenants' security deposit of $900.00. No interest is payable on the deposit during this tenancy.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on October 31, 2021. The landlord did not have written permission to retain any amount from the tenants' security deposit. The tenants provided a written forwarding address to the landlord, which was received by the landlord on November 8, 2021, by email and on November 16, by registered mail. Email is permitted by section 88 of the *Act* and section 43 of the *Regulation*. Registered mail is permitted by section 88 of the *Act*. The landlord filed this application on November 16, 2021, which is within 15 days of receiving the forwarding address on November 8 and 16, 2021.

The landlord's right to claim against the tenants' security deposit for damages was extinguished for failure to complete a move-in condition inspection report, as required by section 24 of the *Act*. However, the landlord applied for cleaning in this application, which is not damages. Therefore, I find that the tenants are not entitled to double the value of their security deposit from the landlord.

I order the landlord to return the tenants' entire security deposit of $900.00, to the tenants. The tenants are provided with a monetary order for same. Although the tenants did not apply for the return of their deposit, I am required to consider it on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $900.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 21, 2022

Residential Tenancy Branch